

CLAIM FOR COMPENSATION OF UTILIZING E-MAIL PERSONAL DATA UNDER ACT NO. 19 YEAR 2016 ABOUT THE ELECTRONIC TRANSACTION AND INFORMATION

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Abstract

Personal data in electronic mail needs to be protected. Any collection and dissemination of personal data is classified into violation against individual's privacy, as personal right involves the rights of determining, providing, or not providing personal data. Private data is a high-valued economy asset or commodity. This far, however, the protection on individual's personal data in Indonesia is not set under a specific regulation, and thus evoking various issues against private right, in particular to personal data. The personal data discussed in this study is related to electronic one, especially electronic mail, and this refers to Act No. 19 Year 2016 about the Amendment of Act No. 11 Year 2008 about Electronic Transaction and Information. Nevertheless, it solely has restricted regulation on personal data, while the issue of utilizing individual's personal data is increasing. This paper discusses the concept of personal data in terms of electronic mail along with the regulation of its utilization. The result shows that the concept of personal data in electronic mail is specifically extensive, involving the scope of private information and communication.

Keywords

Personal Data, Electronic Mail, Compensation

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Introduction

Communication is very important and becomes a fundamental need in human life. As social beings, humans will never escape the need to communicate for their survival. Communication has many uses and purposes, one of the most important is that human communication can form relationships with individuals and other groups, and that relationships are needed in the social life that society must have.

In this era of globalization, communication and information technology has even become one of the main keys for a country to get along and compete globally which will be useful for the progress and welfare of the country. Along with the development of human communication needs and science, the community needs a service of communication that is fast, practical and inexpensive. The need was answered with one of the biggest breakthroughs in the field of technology and information, namely electronic mail or commonly called e-mail (Electronic Mail).

Electronic Mail (Electronic Mail) is a letter with a digital format that is written using a computer and sent via a computer network or the internet as a network that connects various computer networks in the world allowing the delivery of electronic mail quickly. This e-mail can reach the destination in just a few seconds, even though the distance between the sender and the recipient is far apart. In addition electronic mail provides many advantages that conventional postal mail cannot offer. Electronic mail is practical, fast, saves resources and offers more than just writing as a communication medium. We can send digital data, such as voice, photos and even programs via the internet.

Following Djoko Purwanto, electronic mail is a kind of sending letters, information, or messages (both business and non-business) electronically, paperless, and with no-shipping services (Purwanto, 2007:22) On the other hand, John J. Stallard defines it as a non-verbal communication between two or more people using an electronic transmission (Flynn, 2010, 12).

The utility of electronic mail is increasing, not only as means for communication and sending messages, but also for other purposes such as means for promotion, portal of data saving, banking account access (e.g., information of credit card), and initial requirement to make another account like social media and blog. The simple process of making electronic mail along with its utility is increasingly important due to an extensive number of free-paid e-mail providers, making its utility increases.

In fact, the providers may have collected a lot of personal data from their users during the process of making and utilizing electronic mail, including their personal identity due to the requirement of account registration. The users' personal data is indeed important. However, it is possible that such data is misused by other parties.

Current personal data is a valuable asset for businesses and organizations that constantly collect, exchange, process, store and even sell personal data as commodities, especially those related to consumers. In a network environment, a large amount of personal data can now be collected from internet users and collected to create profiles of their online activities and preferences. In some cases, collection and aggregation can take place without the knowledge of the data owner. In the world of networking, ensuring the use of consumer personal data is far more difficult than the physical world.

Collecting and disseminating individual's private data is classified into violation against individual privacy, as it includes the right of determining, providing or not providing their private data (Makarim, 2003: 3). Private data is also considered as high-valued economy asset and commodity. This far, however, protection for individuals' personal data in Indonesia has not set yet under a specific regulation, and thus evoking various issues of violation against private rights, especially those related to individual's personal data.

Regulation for the protection of the use of privacy data are intended to protect the interests of consumers and provide economic benefits for Indonesia. This arrangement will protect the individual's personal data against abuse when the data has value for business interests, the collection and processing of which becomes increasingly easy with the development of communication information technology.

The personal data discussed in this study is related to electronic-based mail that refers to Act No. 19 Year 2016 about the Amendment of Act No. 11 Year 2008 about Electronic Transaction and Information (later called UU ITE). Nevertheless, this law solely has restricted regulation on personal data.

Article 1 number 1 of the ITE Law determines the following: "Electronic information is one or a group of electronic data, including, but not limited to writing, sound, images, maps, designs, photographs, electronic data interchange (EDJ), electronic mail, telegram, telex, telecopy or the like, letters, signs, numbers, access codes, symbols, or perforations that have been processed that have meaning, or can be understood by people who are able to understand them."

Next, Article 1 number of the ITE Law determines as below: "Electronic documents are any electronic information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or the like, which can be seen, displayed and / or heard through a computer or electronic system including but not limited in writing, sound, pictures, design maps, photos or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or meaning or can be understood by people who are able to understand them. regarding the definition of personal data itself". But on the other hand, it is regulated that the use of personal data gets legal protection.

As stated in Article 26 of the ITE Law:

- (1) Unless otherwise stipulated by the Legislation, use, any information through electronic media concerning personal data of a person must be made with the approval of the person concerned.
- (2) Any person violated by his rights as referred to in paragraph (1) may file a claim for losses incurred under this Law.
- (3) Every Electronic System Operator must delete irrelevant Electronic Information and / or Electronic Documents under its control at the request of the person concerned based on the court's decision.
- (4) Every Electronic System Operator must provide a mechanism for the elimination of Electronic Information and / or Electronic Documents that are not relevant in accordance with the provisions of the legislation.
- (5) Provisions concerning procedures for the elimination of Electronic Information and / or Electronic Documents as referred to in paragraph (3) and paragraph (4) shall be regulated in Government Regulations.

Problems regarding the protection of the use of personal data in relation to electronic mail are increasing, for example regarding the responsibility for electronic mail user data and the scope of liability for violations of privacy, the scope of obligations that must be taken or paid by service providers to users of electronic mail services, hacking data centers and regarding compensation claims will be lost profits due to the use of personal data. Use of personal data in connection with electronic mail also has legal issues regarding access from third parties. Electronic mail service providers can provide some privileges to third parties to access the user data of electronic mail accounts stored in the data center. The party's identity, if any, must be disclosed to the customer. Here, third parties may be legal authorities (police investigators and so on) or even internal employees of service providers. Customers must always be notified before the service provider allows third parties to access and use stored data.

Although the provision of UU ITE does not specifically set the definition of personal data, it mentions that the utilization of personal data has a legal protection. On the other hand, any misuse of personal data may bring disadvantages to the victims, as it is related to their personal data. Therefore, they deserve to make claim for compensation. In accordance to the background of this study, two research questions reveal, as follow.

- a. The concept of personal data in relation to electronic mail.
- b. The provision of regulation on personal data utilization in relation to electronic mail.

Research Method

The method of this study is normative legal research. It takes law as a construct of nom system. This system is related to the principles, norms, and rules derived from legislation, court verdicts, and agreement, as well as doctrines (Fajar,2013:34). Both

statute and argumentative-conceptual approaches are used. Toward the legal resources, it uses primary source that contains related regulation and secondary source through literatures.

Result and Discussion

The Concept of Personal Data in Electronic Mail

In its function as a communication tool, electronic mail includes elements of electronic information that are mentioned either in the form of electronic data, letters, signs, numbers, and so on. The concept of personal data in electronic mail is included in information technology because personal data is collected by electronic system customers from the use of their services from the beginning of making electronic mail, such as identity, place of birth date, password and e-mail address itself. Personal data in e-mails is prepared, stored, processed by electronic mail service providers as electronic system providers.

The concept of personal data in electronic mail also fulfills elements in electronic documents because the personal data of electronic mail is electronic information that is created, forwarded, transmitted, received or stored in various unlimited forms that have meaning or can be understood by others.

The scope of individual privacy is very extensive. Therefore, Abu Bakar Munir has classified it into four categories, as follow (Dewi, 2009: 37).

1. Information Privacy

Information privacy is a privacy that sets and relates to collecting individual's private data, such as information of credit card and medical record.

2. Bodily Privacy

Bodily privacy is a privacy of individual's body, such as DNA and Biometrical data like retina and finger print.

3. Communication Privacy

Communication privacy is a privacy of individual's communication such as mails, phone, letters, and other kinds of communication.

4. Territorial Privacy

Territorial Privacy is a privacy of individual's residence and working place.

From the category of general privacy scope, the concept of personal data in e-mail specifically falls into the category of information privacy (privacy of information data) and communication privacy (communication privacy). The entry of the concept of personal data in electronic mail into the category of information privacy (privacy of information data) because the electronic mail function has developed into a storage media and personal data collection. Furthermore, the concept of personal data in

electronic mail comes into communication privacy because it remembers the main function of electronic mail as a communication tool.

According to those general categorizations of privacy, the concept of personal data in electronic mails is classified into information privacy in addition to communication privacy due to its function as a media for personal data saving and collection.

Although the concept of personal data in electronic mails is not clearly set under UU ITE, which is the referent regulation for electronic data, some articles within have implicitly defined the concept of personal data in relation to electronic mails under Article 1 subsection (1) to (4) of UU ITE. Following the analysis of the elements of Article 1 subsection (1) to (4) of UU ITE, that concept includes electronic information, electronic transaction, electronic document, and information technology.

Basically, the concept of personal data in relation to electronic mails is very extensive as it implicates the rights of information and communication privacy. It also satisfy the elements of what UU ITE has defined; electronic information, electronic transaction, electronic document, and information technology. It refers to individual's valid personal data embedded and identified by the user or owner of an electronic mail, which is saved, maintained, and protected on its confidentiality.

In connection with the concept of personal data in e-mail, the concept of personal data in e-mail is personal personal data, in which case the data is correct, attached and can be identified by the user or owner of e-mails that are stored, maintained and maintained truth and protected by confidentiality by electronic mail service provider.

The regulation of personal data protection for users of electronic mail is intended to protect the interests of users of electronic mail services as consumers and provide economic benefits for Indonesia. The regulation of the protection of personal data of users of electronic mail services will protect internet service users when the data has a high value for business purposes, the collection and processing becomes easier with the development of communication information technology.

The regulation of personal data in electronic mails is crucial as it sets the collection, utilization, disclosure, distribution, and protection of personal data. In general, setting individual's personal data is to seek for balance between the needs of protecting the personal data and the needs of government and business field to get access to that data for particularly legal and proper needs.

In general, the development of regulation on the protection of personal data will put Indonesia on a par with developed economies, which have implemented laws regarding the protection of privacy data. This will strengthen Indonesia's position as a trusted business and investment center, which is a key strategy in Indonesia's economic development.

For the benefit of users of electronic mail services, the need for personal data protection, especially in an era where personal data becomes more valuable for

business interests, raises concerns that users' personal data is sold or used without their consent. For this reason, there is a need for a specific law concerning personal data that is specific to ensure that the personal data of electronic mail users is protected properly.

For economic development, the protection of e-mail personal data will strengthen Indonesia's position as a trusted business and investment center and create a conducive environment for the growth of global data management and communication services industry because e-mail is one of the most important activities in the world of information and communication technology over the internet .

Protection of personal data in electronic mail must be introduced as part of the law regarding human rights. Protection of personal data in electronic mail is part of the privacy rights of users which are part of human rights and protection of personal data is a way to respect this right. In Indonesia, there is anxiety about protection for privacy and data protection because there is no law that clearly and specifically regulates it. Therefore, privacy and personal data protection issues have become an urgent agenda in the modern era today. Many countries have applied legal protection for personal data, but there is no Indonesian law that has been firmly established for this.

However, UU ITE does not specifically set on personal data protection in electronic mails. On the other hand, it set the legal assurance for any electronic-based transactions and communications, especially those with Internet Protocol (IP). Donny Budhiyo Utoyo argues that, regardless the regulation on UU ITE, protecting users' personal data should be based on a good faith and optimal effort from both the providers and the users. In addition, although the customers' data is a privacy right to be well protected, business models and internet-based services sometimes ignore such privacy (<http://www.detikinet.com>, 2018).

Therefore, due to various problems and the importance of protecting individuals' electronic mail, the government is expected to protect the people and regulate the issue of privacy on personal data, as well as enacting a legal protection to address such issue.

The Provision of Legal Regulation on Personal Data Utilization in relation to Electronic Mail

Personal data protection requires that individuals have the right to determine whether they will share or exchange their personal data or not. In addition, individuals also have the right to determine the conditions for carrying out the transfer of personal personal data. Personal data is important for individual freedom and self-esteem. Data protection is a powerful driver for the realization of political, spiritual, religious freedom and even sexual activity. The right to self-determination, freedom of expression, and privacy are important rights to make humans.

Indonesia has not set a specific regulation on personal data utilization. The regulation of privacy setting and personal data protection in Indonesia may not be found in the existing law. Therefore, the issue of protecting individual's privacy and personal data

utilization should be considered as an urgent issue, due to its development in Indonesia.

Legal experts in Indonesia always refer to article 28G of the 1945 Constitution of the Republic of Indonesia as a guideline for making more specific regulations concerning the protection of personal data. Article 28 G of the 1945 Constitution states: "Every person has the right to protection of his personal, family, honor, dignity and property under his control, and has the right to a sense of security and protection from the threat of fear of doing or not doing something is human rights ".

Toward the utilization of individuals' personal data in electronic mails, the primary regulation refers to the provision of law that set on electronic data under the Act of Republic of Indonesia No. 19 Year 2016 about the Amendment of Act No. 11 Year 2008 about Electronic Transaction and Information (later known as UU ITE). In the Elucidation of Article 26 of the ITE Law, it is stated that the protection of personal data is a part of privacy rights.

In order to provide security for the users of electronic-based system, in particular to electronic mail, the act for personal data protection and privacy rights is mentioned under Article 26 subsection (1) of UU ITE. In addition, Government Regulation (PP ITE 2012) also regulates the utilization of personal data under Article 9, 12, 15, 22, and 39, as well as Ministrerial Regulation of Information and Communication on Electronic Systemized Personal Data.

In addition there is a form of government regulation (PP ITE 2012) which regulates the use of personal data contained in articles 9, 12, 15, 22 and 39 and in the form of ministerial regulations (Permenkominfo Personal Data Electronic Systems). As stated in Article 9 paragraph (1) PP ITE 2012, that "Electronic system operators must guarantee the confidentiality of the source code of the software. Electronic system providers in this case are electronic mail service providers. "In these articles it is also interpreted as requiring electronic system providers to maintain the confidentiality, integrity, authenticity, accessibility, availability and traceability of electronic information and / or electronic documents in accordance with the provisions legislation. So that e-mail service providers are required to carry out the above obligations on personal data in e-mail.

In Article 12 paragraph (1) of PP ITE 2012, it is stated that the organizer of an electronic system in carrying out its electronic system must guarantee the availability of service level agreements, the availability of information security agreements on information technology services used, as well as information security and internal communication facilities held.

In Article 15 paragraph (1) of PP ITE 2012, Electronic System Operators are given the following obligations:

- a. Maintain the confidentiality, integrity and availability of privacy data that it manages
- b. Ensure that the acquisition, use and utilization of privacy data is based on the approval of the owner of the privacy data, unless otherwise stipulated by the legislation; and
- c. Ensuring the use or disclosure of data is carried out with the approval of the owner of the privacy data and in accordance with the objectives conveyed to the owner of the privacy data during data acquisition.

Article 22 paragraph (1) contains the meaning of obliging the organizer of an electronic system to maintain the confidentiality, integrity, authenticity, accessibility, availability and traceability of electronic information and / or electronic documents in accordance with the provisions of the legislation. So that e-mail service providers are required to carry out the above obligations on personal data in e-mail. Misuse of personal data in e-mails owned by the owner of a letter account is defined as an act that violates the rights of others, contrary to decency and not in accordance with appropriateness in the community regarding paying attention to the interests of others. Based on this, the responsibility of the party who is abusing would be very important because such abuse can cause harm.

Article 26 of UU ITE provides personal data protection. It mentions that the utilization of every information and personal data through electronic media should be conducted under the agreement of the owner of the data, if not so, it is considered as violation against personal rights. In case of such violation, the defendant is the electronic mail service provider as the host of electronic system, as well as a direct service provider to the user in relation to electronic mail, as those parties have access to the users' personal data in their service system.

Following the law applied in Indonesia, a claim for compensation in civil cases is based on two reasons; default and unlawful conduct (*onrechtmatigedaad*), and the legal basis for that issue is Volume III Article 1243 of Civil Codes for Default cases, and Article 1365 of Civil Codes for unlawful conduct.

Conclusion

1. The concept of personal data in electronic mails is specifically extensive, involving the scope of information privacy and communication privacy. Following the analysis of the elements of Article 1 subsection (1) to (4) of UU ITE, it includes electronic information, electronic transaction, electronic document, and information technology.
2. The provision of legal regulation on personal data utilization in electronic mail is under several laws, including Article 26 of UU ITE, Article 9, 12, 15, 22, and 39 of Government Regulation (PP ITE 2012), and Ministerial Regulation of Informatics and Communication on Electronic Systemized Personal Data.

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